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Christine Bell: Thoughts of an 'Ordinary Mum' on Devo Max Versus Independence

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It's the morning. I've got the kids out the door, a cup of tea in my hand. Aahh, I've time to think. In fact, I also work full time as Professor of Constitutional Law, so sometimes thinking is part of my job. But this is personal. I have a vote to cast and my kids, and a lot of other people's future, appears to lie on it. And the tea helps more than the constitutional law – we have been off all constitutional charts for some time now.

Should I reconsider how to vote now that a no vote is a vote for devo-max? It's a funny old one this. Devo-max seems a nice half-way house between independence and the status quo of remaining within the UK. The latest UK 'better together' offer has been made on that basis. There is of course a deep irony that the 'third option' which was not permitted to be on the ballot paper, now has eclipsed a straight 'no' that we understood was on the ballot paper. I hated the binary choice. I hate referendums. So does this persuade me away from the 'yes' I had slowly come to?

Let's leave aside questions of good faith for a minute, and let's also leave aside discrepancies in what the different parties are offering. There are several more profound difficulties with devo-max which make me hesitate.

What more power to devolve is difficult to resolve in any coherent work-able way. The lack of clarity from the three UK political parties on either their own or a combined devo-max package does not reflect a commitment of will, it reflects the fact that further splitting of power is actually quite difficult to do coherently. The 2012 Act does devolve more power, and leaves little room for further 'playing around the edges' with regard to power-splitting. With more power-splitting the whole devolution-UK settlement becomes a bit chaotic – this part of this tax, by this much percentage to go up not down, this piece of welfare maybe, if we can work the computer system out (and in Northern Ireland where welfare is devolved, evidently the computers say 'no' to doing anything differently from the UK). It looks difficult to work, and difficult to assess what will result. Sounds pretty complex for businesses who tell us that any complexity leads to price rises, and for governments who assure us they all are committed to social justice but seem unsure what the social justice implications of this jumbled tapestry of powers are.

The closer devo-max comes to independence, the more it raises all the same objections to independence. And that's just the thing. Further trying to split up tax and welfare as far as I can see gives rise to all the same objections that better together Labour supporters and others are objecting to with regard to independence. These are: the risks of 'a race to the bottom', greater transaction costs for individuals moving between jurisdictions, different tax regimes for corporations creating costs they will 'pass on' to consumers. This is why Labour – the keenest proponent of devolution among the three parties – have produced the most limited proposals for more devolution on the table. Partial financial devolution of bits of tax and welfare, make for an incoherent UK-wide social vision on which their positive arguments for Union depend. So for those in Labour who are telling me that this is a way to preserve the social union (and my vote is vulnerable to anyone who can persuade me of greater social justice), well I don't see it. Paradoxically, if you give away all the same powers you need to deliver the social-democratic vision of the UK as an entity, what good is the Union in delivering it?

More taxation and borrowing powers create an absolutely inevitable need to re-work the Barnett formula, and without devolution of control over natural resources. So tax rises and/or borrowing, will be the only way to pay for protecting public services against austerity. It is difficult to see how this is a great alternative to independence, although it may be difficult for nationalists to oppose anything that looks like more power. This is why Tories, paradoxically in contrast to Labour, have produced some of the most far-reaching new devolution powers on the table. More tax raising and borrowing powers in some limited formula neatly solves a few problems all at once: devolve taxation and let Scotland pay for all its wanton education and health through increased taxes if it wants to, or hammer it for rejecting 'more power' if it does not (and note the dressing of tax-raising powers in the false garb of strengthening the 'pocket-money' Parliament, a term that unfairly demeans an effective institution, we do all pay the taxes to Westminster that it devolves back in 'pocket-money' after-all). The pledge published to-day in the [Daily Record](#) (and pretty difficult to find anywhere else on the web) is very watered down compared to Gordon Brown's proposed 'three guarantees' which included a 'guarantee' to preserve the Barnett formula. The Barnett formula is not guaranteed in to-day's rather lacking-in-content pledge, just mentioned.

The proposals don't meet the aspirations for democratic renewal that is giving rise to 'yes' momentum. Devo-max is something I could have definitely gone for at an earlier stage, if credibly presented and debated. But at this point it feels like the answer to the wrong question. The momentum for yes is not, in my view, based on a negative desire for 'divorce' or 'amputation' from the UK body-corporate – 'better together' metaphors. Neither is it now just a movement for the 'economic levers of power', the SNP metaphor. It is a movement for democratic renewal. People have woken up to the fact that this vote matters and that each individual can make a difference. David Cameron nearly got it right when he talked about 'kicking the effing Tories' but crucially – not quite. This vote is now about kicking political elites into responding to those to whom they are accountable: the people. A bit of an enlightenment revival really. Quite simply, people don't just feel this vote matters, they feel that the SNP or any Scottish government post-independence will be forced to be accountable to them in a way that Westminster has ceased to be for many across the UK. The guardian tells us 'politics can't be like this all of the time'. Sure, but we used to expect that it was a bit like this, some of the time, particularly on things that really matter to us. Now we have a chance that it will be.

Preserving the Union would require placing something inviolable at its centre. A commitment to a Union based in social justice, it seems to me would involve less focus on more powers to Scotland, and more on veto rights from England, Wales, Scotland and Northern Ireland on matters of UK-wide constitutional principle. The UK has fundamental values written into its (unwritten) constitution, which are the only tangible glue that binds the Union as a union. These values are written into every devolution statute as reserved powers. The union is held together by a common tax base, a common commitment to common welfare pot, human rights protections to create a common platform of human decency across all regions, a common foreign and defence policy, and membership of international organisations and the legal framework of the EU, the UN and the European Convention on Human Rights which enshrine and reflect our values. This is the written constitutional foundation of the Union. Are these values untouchable – no of course not – we could change them. But surely in a devolved context we should only do so as a United Kingdom. At present – ironically – nearly all the parts of this Union 'glue' are under unprecedented attack by the current government. And the political consequences when they do are terrible. Let's look around for a minute: forcing the

devolved areas to implement austerity in a Tory package is bringing down the power-sharing government in Northern Ireland with potential to wreck nearly 20 years of a perfectly good peace process. Austerity is cutting hard in Wales, leading to further and further devolution proposals with particular discontent to come if the Barnett formula is not re-visited due to commitments made in the Scottish referendum campaign. And of course austerity policies have upped the ante in the independence debate in Scotland, and one can imagine the fall-out from a decision to leave Europe. Apart from Brown's proposed 'guarantee' a few days ago which began to edge in this direction, no-one is talking about, let alone planning to pay, **the real price of the Union**: that any change to the UK's fundamental principles of union should require to be agreed by all its devolved bits. There are fairly easy ways to ensure this, short of some sort of lengthy constitutional overhaul, which I will turn to on the 19th should there be a 'no' vote.

Devo-max on offer for one week only, now negates rather than delivers democratic renewal. Instead of deliberating and talking about the values at the heart of the Union that might justify its continued existence, we are fiddling round the edges – or rather a group of Westminster parliamentarians is. A rather undefined devo-max is now presented as *fait accompli* hand-out, when what it comprises should be a matter of public deliberation in Scotland, and arguably across the UK as a whole (this was the very reason that the UK government opposed putting it on the ballot paper in the first place). These last-minute proposals and the manner of their coming self-negate the very concept of democracy they seek to sell to a population bent on democratic renewal. The devo-max proposals came so late in the day that the postal votes had already been cast. They were so late the purdah rules were in place meaning that (conveniently perhaps) no government vision can be put on paper with its credibility able to be judged (and in fact on any sensible reading purdah has been unconstitutionally breached). This is hopelessly disrespectful to those of us who have spent three years deliberating and did not want a binary choice in the first place. Should people accept this constitutional mess? Is this the way to deal with issues of this magnitude? No: we can't cobble together the Union on this basis and everyone knows it.

So, the choice now is between independence and a fairly loose political pledge to 'further powers' for Scotland, and that 'the people of Scotland will be engaged directly as each party works to improve the way the UK is governed' (pledge as printed in Daily Record). What on earth does that mean? That there will be more referenda? That these on-going improvements are all in hand and will be on-going anyway – ie business as usual? It's hardly a fast commitment to a constitutional overhaul.

And the independence on offer has 'devo max' dimensions – so there is another way to do this. There is also competition for this devo-max middle ground – a 'better together' dimension if you like, to the independence on offer. Independence offers a new clarity as to where legislative and executive power lies with an independence vote, no messing around with bits of this power and bobs of that, but beyond that the two campaigns have a lot of similar ideas of what they want to do together. Would it not be possible to find a way to move beyond nation-statehood as some sort of black box concept to figure out when to be independent and when to be together in this new world? In fact, in our globalised world states are no longer black boxes: inter-state relations can pretty much be crafted whatever way one wants. If we can reconcile the European cooperation of the EU with state sovereignty as we and all those in Europe in fact have (yes Nigel, we have) for around 30 years, as better-together proponents will no doubt unite to argue in 2017, then why can we not reconcile Scottish and rUK sovereignty with some novel form of inter-state collaboration? Would it be so terribly '[wet' of England](#) to agree to the Union it can get? If we are better together, then why is it so troubling to Westminster politicians that a currency union would impinge the sovereignty of Scotland? If we are better-together, would every step not be taken to minimise cross-border impact – we have certainly been able to do that along the UK-Ireland border, with the border now completely invisible despite a much worse starting point of the most militarised border in Europe. Could we not cooperate on a common tourism policy, on maintaining one common research area and funding pot for Universities, to affirming and supporting each other's national symbols, to dual citizenship? Scottish people that I talk to who consider voting yes are not seeking divorce or to be 'amputated'. They are seeking a re-alignment of legislative and executive power with the politicians they elect and feel they can hold accountable, and also to control their natural resources and their foreign policy (something the devo-max proposals completely neglect). It does not make sense to adopt a 'we'll wreck the place if you go' attitude along with one of 'please stay together'. No-one in Scotland was offered anything which met those needs short of independence. If Scottish people take the only option apart from the status quo that they were allowed, does it have to be treated as 'once you reject togetherness on our terms, we will spurn you forever and make sure you have to 'take your oil': we will erect cross border posts with armed guards, ensure that you are squeezed for every last penny, oppose all Union even to the de-stabilisation of the markets for all of us, and fight to make sure that your entry to the EU is as difficult as possible? I can't actually imagine that that will be the position for people so fervently committed to the idea that we are better together. Would the logic of that position if it is genuine (and I believe it is), not be to try to find and support every form of togetherness that can still be achieved, where sensible for both states?

Sure, it can't be said for another few days. But if there is a yes vote, this is what the post-independence Unionist and Nationalist project must be – one of maximum cooperation. The only obstacles to the new forms of political togetherness that remain possible, are those that people erect in their minds. I hope that UK politicians have not irrevocably bought into their own campaign rhetoric so that the constitutional and international commitment to pragmatism that has been responsible for Britain's enduring influence in all the countries it 'let go' will be laid aside in a rash dog-in-the-manger moment when it comes to Scotland's attempt to re-define its relationship to the centre. I hope that Scottish Nationalists do not give up on their commitment to interdependence in a moment of rash ebullience of 'ourselves alone' that a yes vote could bring. But I believe strongly in the common sense of all sides to recognise that independence takes place in an interdependent island and world and that independence and inter-dependence are two sides of the same coin. What we need to-day and has triggered this campaign, and what we will still need on Friday come-what-may, is balance between independence and inter-dependence, not all-or-nothing lurches from one to the other.

So, my tea is nearly finished. As I said, I came to this vote as an outsider. I started by feeling I had little entitlement to speak. I remained undecided for nearly the whole duration.

These are my articles of faith: I want to see a more interconnected world not one full of amputated limbs failed states and punishment. I want to work with my fellow humans wherever they are, Scotland, UK or far beyond, so that we can all live decently and fairly – or as I would put it 'justly' – together on this planet. I never can move myself to much excitement on where national borders lie, or get turned on by concepts of nation-statehood and – unlike the guardian – I see nationalism on both sides and not just one.

I don't like being forced into binary decision-making when there are ways for us to all get more of what we want by exploring the non-binary options that are too hastily pushed off the table. I still think referenda are bad ways to resolve questions in which there are always more than two questions. There were always other ways of doing this.

Three years of living in Scotland, and engaging in the independence debate and nothing in me has really changed on any of those scores – and perhaps in this I remain true to my outsider status and – polls might suggest – my gender (if we can really talk that way).

Nonetheless, I will vote because this is the choice I have been given. I have been on a slow journey. I moved slowly to a soft tactical 'yes' because I saw it as the only way to democratic renewal across the UK – and yes I was a little romanced – but my best decisions in life have been made by my heart. I then moved to a more committed yes because before my eyes I saw the democratic mobilisation of people who politics had left behind, and felt with excitement the possibility of a new political moment. Where I stand now, I don't think a mish-mash of bits of taxation powers, devolution of housing benefit, and loose pledges that I will be 'engaged' in improving government across the UK really do it for me. It feels more likely to create a big mess which will make where power lies less clear rather than more, and will mean that both Westminster and the Scottish Parliament can blame each other, and it will genuinely be pretty hard to figure it out who runs what. Big business will put the price up anyway (because whatever break they are given, the prices never come down), and social justice will become harder not easier because it has gone out of fashion as a UK fundamental value and because the combination of the island of London bubble and devolution mean no-one will see the point of the conversation (witness how easily the NHS could be dismantled in England and Wales without the protest of Scotland and Northern Ireland, where health was devolved).

Against this, I must weigh Independence and the possibility of a new politics with democratic accountability and social justice at its heart. I don't feel we cut loose from the island-wide or even the global social justice project by claiming it for Scotland: I feel we re-invent it for everyone. (Would Labour be talking social justice in these terms this close to a general election if not for this referendum, it seems a public language of the last two weeks?) If independence comes about that is our responsibility and our challenge.

I definitely feel more scared than I did: project fear has not been without effect. Independence could really happen: do we consign ourselves to investable doom destruction and devastation by taking this chance? But I have resisted accepting inevitable doom and destruction all my life in much worse circumstances. Anything good I have seen politically came from people believing that things could be different and working to make them so. On my own political journey taught by those in the most desperate of circumstances in war-torn countries, I have learnt that it is pessimism and not optimism that is falsely naïve: it tell us that things will never change for the better and that we are defeated before we begin. Pessimism retains its hold even when what it offers is unattractive because it claims to offer certainties where optimism is clear it can only offer chances. Taking chances is scary.

So, the kids are out at school, I've finished my tea, the Westminster train has come and gone. I've made up my mind.

I'll take my chances with this because it feels like the chance of a lifetime.

So, it's still a yes from me then.

Christine Bell is Professor of Constitutional Law at the University of Edinburgh and Director of the Global Justice Academy

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